

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CITY OF MOSES LAKE,
a Washington municipal corporation,

Plaintiff,

vs.

The UNITED STATES OF
AMERICA, et al.,

Defendants.

No. CV-04-0376-AAM

**ORDER GRANTING
MOTION TO COMPEL,
*INTER ALIA***

BEFORE THE COURT are defendant Boeing Company's Motion For Protective Order (Ct. Rec. 306) and Praecipe (Ct. Rec. 309), and plaintiff City of Moses Lake's Motion To Compel (Ct. Rec. 313).

Oral argument was presented by telephone hearing conducted on September 22, 2006. Mark W. Schneider, Esq., and Eric S. Merrifield, Esq., argued for Boeing. Steven G. Jones, Esq., argued for Moses Lake. Also present during the hearing were Eric S. Merrifield, Esq., for Boeing, Michael J. Zevenbergen, Esq., for United States of America defendants, and Sarah M. Schlosser, Esq., for defendant Lockheed Martin Corporation.

Having reviewed the briefing and declarations submitted by Boeing, Moses Lake, and the United States, and having heard the argument of counsel, the court

**ORDER GRANTING MOTION
TO COMPEL, *INTER ALIA*-**

1 concludes the information sought by Moses Lake through a Fed. R. Civ. P. 34 (a)(2)
2 site inspection is relevant to Moses Lake's CERCLA and MTCA liability claims
3 against Boeing and is reasonably calculated to lead to the discovery of admissible
4 evidence in that regard. Furthermore, the burden upon Boeing is outweighed by
5 Moses Lake's need for this information. Accordingly, Moses Lake's Motion To
6 Compel (Ct. Rec. 313) is **GRANTED** and Boeing's Motion For Protective Order (Ct.
7 Rec. 306) is **DENIED**.

8 **IT IS HEREBY ORDERED:**

9 1. Boeing shall permit Moses Lake to conduct a site inspection as soon as
10 possible and shall produce a witness or witnesses knowledgeable regarding the topics
11 identified in Moses Lake's August 23, 2006 Fed. R. Civ. P. 30(b)(6) Notice of
12 Deposition to lead the tour of Boeing's property and facilities, and provide testimony
13 to assist Moses Lake in its site inspection. The tour may be videotaped at Moses
14 Lake's discretion.

15 2. Boeing shall thereafter, as soon as possible, permit Moses Lake and its agents
16 access to Boeing's property and its buildings to implement a sampling plan and take
17 soil and soil gas samples at locations inside and outside Buildings 8-01, 8-02, 8-03,
18 and 8-15. The number and locations of samples shall be determined by Moses Lake
19 and its agents, based upon the results of the site inspection.

20 3. Moses Lake shall provide Boeing with a copy of the sampling plan it
21 develops following the site inspection, prior to its implementation, to provide Boeing
22 with notice of the locations at which Moses Lake intends to sample.

23 4. Boeing, Lockheed, and the United States shall be permitted to accompany
24 Moses Lake and its agents during the sampling event, and to take split samples if they
25 choose. Moses Lake shall provide sampling results to Boeing, Lockheed, and the
26 United States as soon as possible.

27 5. Moses Lake, Lockheed, and the United States shall take reasonable steps to
28 mitigate the disruption of Boeing's operations occasioned by the sampling event. The

1 parties shall cooperate to ensure that the sampling is completed and the disruption is
2 minimized.

3 **IT IS SO ORDERED.** The District Executive is directed to enter this order
4 and forward copies to counsel.

5 **DATED** this 22nd of September, 2006.

6
7 s/ Alan A. McDonald
8 **ALAN A. McDONALD**
9 Senior United States District Judge
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